

Aity Dkt. No.: CORA-014

USSN: 10/087,599

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 1 – 23, 25 – 34 and 44 – 53, as well as new Claim 54, the only claims pending and under examination in this application.

Claim 54 has been added and finds support in paragraph 27 of the specification. As Claim 54 introduces no new matter, its entry by the Examiner is respectfully requested.

Claim Rejections - 35 USC § 102

The Office Action states that Claims 1 – 7, 9 – 23, 25 – 29 and 31 – 33 are rejected under 35 USC § 102(b) as being anticipated by Sahota et al. (US 5,370,608) and Fuller et al. (US 6,139,571). The Office Action states that both the '608 patent and the '571 patent disclose a device for localized contact of a fluid to a target site comprising a fluid delivery element, a porous region, and an aspiration element.

As stated in MPEP 2131:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

An element of the claimed invention is a porous region at the end through which the fluid must flow to contact the site and an aspiration element. The Merriam-Webster online dictionary defines "porous" as "possessing or full of pores." The same dictionary defines the word pore as "a minute opening." Accordingly, the word "porous" means a full of minute openings.

While both the '608 and '571 patents disclose devices for the delivery of fluid to a physiological site, neither of these references disclose a porous region at the end through which the fluid must flow to contact the site. Therefore, because neither the '608 nor the '571 patents disclose each and every element of the claimed

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invention, Claims 1 – 7, 9 – 23, 25 - 29 and 31 – 33 are not anticipated by these references under 35 USC § 102(b) and this rejection may be withdrawn.

The Office Action states that Claims 44 – 53 are rejected under 35 USC § 102(b) as being anticipated by Constantz et al. (US 6,488,671). It is noted that the cited Constantz patent issued after the filing date of the present application and therefore does not qualify as prior art to the present application. Accordingly, for this reason alone this rejection may be withdrawn.

Furthermore, as reviewed above, an element of the present invention is the presence of a porous region.

The '671 fails to teach or suggest a porous region. Therefore, because the '671 patent does not disclose each and every element of the systems and kits of the claimed invention, Claims 44 - 53 under 35 USC § 102(b) are not anticipated by this reference and this rejection may be withdrawn.

The Office Action states that Claims 1, 8, 21, 29, 30, 31, 33 and 34 are rejected under 35 USC § 102(e) as being anticipated by Briskin et al. (US 6,228,046).

As discussed above, the fluid delivery device claimed in the present application contains a porous region at the end of the device.

The '046 patent fails to teach or suggest a device with a porous region. Therefore, because the '046 patent does not disclose each and every element of the fluid delivery device of the claimed invention, Claims 1, 8, 21, 29, 30, 31, 33 and 34 are not anticipated by this patent under 35 USC § 102(e) and this rejection may be withdrawn.

Finally, with respect to newly added Claim 54, it is believed that this claim is also patentable over the cited references, for at least the reasons provided above as

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well as for the reason that the recited porosity range is neither taught nor suggested in any of the cited references.

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CONCLUSION

In view of the remarks above, Applicants respectfully submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone undersigned. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815.

Respectfully submitted,

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